IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

WP(C).No. 6183 of 2007(S)

OA.858/2005 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
.....

PETITIONER:
---

1. UNION OF INDIA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, DEPARTMENT OF POSTS,
NEW DELHI.

2. CHIEF POSTMASTER GNERAL, KERALA CIRCLE,
THIRUVANANTHAPURAM-695 033.

3. DIRECTOR OF POSTAL SERVICES,
OFFICE OF THE POSTMASTER GENERAL,
CENTRAL REGION, KOCHI-682 018.

4. SUPERINTENDENT OF POST OFFICES,
IDUKKI DIVISION, THODUPUZHA.

BY ADV. SMT.M.LALITHA NAIR

RESPONDENTS:

JOSE DOMINIC, S/O.DOMINIC, ACCOUNTANT
HEAD POST OFFICE, THODUPUZHA,
RESIDING AT QUARTER NO.B3, POSTA STAFF
QUARTERS, THODUPUZH-685 584.

BY ADV. SRI.M.R.HARIRAJ
SMT.REKHA VASUDEVAN
SRI.SURAJ.S
SRI.P.A.KUMARAN
SMT.VINEETHA B.
SRI.S.NITHIN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1-TRUE COPY OF ORDER OF THE CAT ERNAKULAM BENCH IN OA 858/2005 DT.4.12.2006

EXT.P2-TRUE COPY OF OA DATED 7.12.2005

EXT.P3-TRUE COPY OF STATEMENT DATED 25.7.2005

// TRUE COPY //

J.B. Koshy & T.R. Ramachandran Nair, JJ.

- -

W.P.(C).NO.6183 of 2007-S

- -

Dated this the 20th day of March, 2007

JUDGMENT

Koshy, J.

The respondent was ordered to be on deemed suspension as he was convicted in a criminal case. He was working as an Accountant and he was convicted for an offence punishable under Section 138 of the Negotiable Instruments Act and he was sentenced to undergo simple imprisonment for one year and to pay compensation, by judgment dated 14.8.2002. In appeal, his sentence was suspended and he was not imprisoned or detained at all in the process. Later, matter was compromised. He was placed under deemed suspension invoking Rule 10(2) of CCS (CCA) Rules. Rule 10(2) reads as follows:

> "(2) A government servant shall be deemed to have been placed under suspension by an order of appointing authority -
>
> (a) with effect from the date of his detention, if he is detained in custody whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;
>
> (b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

> Explanation. The period of forty-eight hours referred to in clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account."

A reading of Rule 10(2) shows that under sub-clause (a) a Government employee will be deemed to be under suspension if he is detained in custody by the police for more than 48 hours. Rule 10(2) read with the explanation would show that he will be deemed to be suspended if he was imprisoned for a period beyond 48 hours on the basis of conviction by the Magistrate. Rule 10(2)(a) deals with detention before conviction and Rule 10(2)(b) deals with imprisonment after conviction. Here, he was not detained or imprisoned at all. It is submitted by learned counsel for the petitioners that in another case also there was a conviction. that is not the subject matter of the order under challenge. But if there is any other misconduct committed by the respondent, it is for the petitioners to take appropriate action. Here the respondent was not suspended pending enquiry under Rule 10(1) of the Rules. In fact, the domestic enquiry and disciplinary action was closed when the Criminal Appeal was closed due to compromise.

2. The whole question is whether deemed suspension is correct or not. The suspension order is dated 21.10.2002 which reads as follows:

> "WHEREAS Shri Jose Dominic, Accountant, Divisional Office, Thodupuzha is convicted in CC 229/99 by Judicial First Class Magistrate Court, Kattappana for offence under section 138 of N.I. Act.
>
> Now, THREFORE, the said Shri Jose Dominic, Accountant, Divisional Office is deemed to have been suspended with effect from 7.8.2002 in terms of sub rule (2) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and shall remain under suspension until further orders."

The above order was confirmed with a small correction, by Annexure A6 order, the operative portion of which reads as follows:

> " From the records I find that the appellant was convicted by Judicial First Class Magistrate, Kattappana on 14.8.2002 for offence punishable under section 138 of Negotiable Instruments Act and was sentenced for imprisonment for one year. Though Sessions Court, Thodupuzha suspended the sentence, the conviction stands as such. In these circumstances, suspension with effect from the date of conviction is justified in the light of the provisions under Rule 10(2) (b) of CCS (CCA) Rules, 1965. However, there is mistake in the date of effect noted in the impugned order. In accordance with the provisions in Rule 10(5)(c) of CCS (CCA) Rules, 1965 the date of effect of suspension in the impugned order is hereby modified as 14.8.2002. With this modification, the impugned order of suspension is confirmed."

In appeal, conviction was set aside as the matter was compromised between the parties. The suspension was revoked by the review committee on 9.6.2004 by Annexure A8 order. The only question is whether he will be on deemed suspension even though he was not detained or imprisoned after conviction for more than 48 hours. The Tribunal found the deemed

suspension as illegal and therefore his application was allowed with consequential benefits.

3. We are in full agreement with the Tribunal's order. In any event, there is no perverse finding or patent illegality so as to attract Article 227 of the Constitution of India. The writ petition is dismissed.

(J.B. Koshy, Judge.)

(T.R. Ramachandran Nair, Judge.)

kav/